IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2007

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THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN

WRIT PETITION NOS.2571/2006, 2576/2006,
35281/2005 AND 35279 OF 2005

1.Contemporary Targtt praful private limited.
Club Road, Coonoor ... Petitioner 2571 of 2006
(O.P.No.1632 of 2003)

2.Sohrab Ardeshir Brokers Company
private Limited,
ABC House, Figure of 8 Road,
Coonoor ...Petitioner in W.P.No.2576/06
(O.P.NO.1624 of 2003)

3.Best Tea Brokers Private
Limited,
42-13 Dorlingtan Avenue,
Coonoor 643101 ...Petitioner in W.P.No.35279/05
(O.P.No.1533 of 2003)
Petitioner in WP NO. 35281/05
(O.P.No. 1532 of 2003)

-vs-

The Commercial Tax Officer,
Coonoor ... Respondents in all
writ petitions.

Petitions filed under Article 226 of Constitution of *India, praying for the issuance of a writ of Certiorari to call for the necessary on the files of the respondent herein in TNBGST Asst No. 2540693/20/01/2540096/2000-2001/2541353/2000-2001 and 254353/95-2000 dated 5.11.2003 respectively and quash the same as illegal.*

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For Petitioner : Mr. N. Inbarajan
For Respondent : Mr. Haja Nazirudeen
Special Government Pleader (Taxes)

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COMMON ORDER

These writ petitions have been filed praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in TNGST.Asst.No.2540693/2000-01 dated 5.11.2003; TNGST.Asst.No.2540096/2000-01 dated 5.11.2003; TNGST.Asst.No.2541353/1999-2000 dated 5.11.2003 and TNGST.Asst.No.2541353/2000-01 dated 5.11.2003 and quash the same as illegal.

2. The petitioners are tea brokers, auctioneers and registered dealers under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Local Act") as well as the Central Sales Tax Act, 1956, (hereinafter referred to as "the CST Act"). According to the petitioners, the petitioners conducted their business for and on behalf of the producers of tea and they assist the tea estate owner to sell their products and for the service rendered by the petitioners they receive their brokerage at 1% . For the respective assessment years, the activity of the petitioner has been considered as sale and the petitioners were subjected to assessment. In respect of the sale regarded as a local sale, the TNGST assessments were made. In respect of the sale to persons residing outside the State of Tamil Nadu, it had been regarded as an Inter-state sale and assessed as such on accepting C - form at the lower rate. While that being so, taking note of the ratio laid down by this Court in the case of MOTI & COA. VS. STATE OF TAMIL NADU reported in (1999) 113 STC 53 and W.A.SHAH ENTERPRISES (P) LIMITED VS. DISTRICT FOREST OFFICER reported in (2003) 129 STC 299, the respondent has formed an opinion that those sale regarded inter state sale was not occasioned the movement of those goods from Tamil Nadu to other State or the movement of those goods from Tamil Nadu on purchase was not pursuant to a contract of sale and are thus not inter state sale but exigible to tax under the Local Act. On that reason issued pre-revision notices and upon hearing the objections raised by the petitioners, the assessing officer, concluded that the sales effected by the petitioners in the auction sale were all intra-state sale and revised assessments under the T.N.G.S.T.Act. The said assessments made against the respective petitioners are impugned in these writ petitions.

3. Learned Senior Counsel appearing for the petitioners submitted that in respect of the respective assessment years, the respondent assessed the respective petitioners taking into account the transactions both under the TNGST Act and CST Act and they have become final. Of course it is open to the respondent to revise the assessment. If the respondent intends to revise the

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assessments of the transaction, which are the subject matter of the earlier assessments, the earlier assessment orders have to be set aside and thereupon afresh assessment orders have to be made. The assessments cannot be revised on change of opinion.

4. However, learned Government Pleader appearing for the respondent argued for sustaining the impugned orders.

5. Heard the arguments of the learned counsel on either side.

6. The respondents are invested with the power to treat a particular transaction according to their own wisdom and judgment as inter-State trade or intra-State depending upon the terms of the contract and the events intrinsically connected with the transaction.

7. The crux of the point on which the respondent reversed the earlier CST assessment orders into one of the TNGST assessment orders is that the petitioners are auctioneers and they sold the tea by means of auction. In the auction, sale was concluded on the fall of hammer. Inspite of the fact that the purchasers might be from other States. However, that was disputed by the petitioner.

8. The point to be resolved is, whether the movement of the goods from Tamil Nadu to other State is pursuant to the contract of sale or in the alternative movements are occasioned pursuant to the sale. That has to be considered by the assessing authority. The assessing authority has considered the issue to the effect that irrespective of the origin of the purchaser, or irrespective of the state from which the purchaser hails from, as the sale concluded at Coonoor at the auction point on the fall of hammer. If at all, the petitioner is having any material to prove that the sale is inter-State and not intra-State sale, that has to be done by placing the material before the appellate authority only. Useful reference can be had to the judgment of the Supreme Court in the case of *Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 = 53 STC 315*, wherein the Supreme held as follows:

> " (ii) The instant case was a case in which the entrustment of power to assess was not in dispute, and the authority within the limits of his power was a tribunal of exclusive jurisdiction.
>
> (iii) The challenge was only to the regularity of the proceedings before the Sales Tax Officer as also his

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authority to treat the gross turnover returned to be the taxable turnover.

(iv) Investment of authority to tax involves authority to tax transactions which in exercise of his authority the taxing officer regards as taxable, and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable."

9. The Apex Court in the said judgment further held that the Act provided for a complete machinery to challenge an order of assessment and the orders of assessment in the case could only be challenged by the mode prescribed by the Act and not by a petition under article 226 of the Constitution of India. The Act provided for an adequate safeguard against an arbitrary or unjust assessment. The assessee had a right to prefer appeals under section 23(1) of the Act subject to their payment of the additional amount of tax as enjoined by the proviso thereto, and as regards the disputed amount of tax they had the remedy of applying for stay of recovery to the Commissioner under clause (a) of the second proviso to section 13(5) of the Act.

10. Learned Senior Counsel Mr.Natarajan appearing for the petitioners contended that if this Court is intended to relegate the petitioners to avail the appeal remedy, the petitioners have to comply with the statutory provision of payment of 25 percent of the tax for entertaining the appeals and thereupon in respect of the disputed tax, the appellate authority used to pass a conditional order directing the petitioner to pay certain percentage of the tax. As the petitioners were already assessed under Central Act and paid tax under Central Act, and the said amount is with the Department, that amount may be directed to be adjusted for the percentage of tax to be paid for maintaining the appeal and for interim order during the pendency of the appeals.

11. The request of the learned counsel for the petitioners stand to reason, because the very same transaction, which is assessed as local sales, in the impugned order, was the subject matter of assessment under Central Act and tax under Central Act has been paid by the petitioner. This Court while exercising the jurisdiction under Article 226 of the Constitution of India can very well balance the equities between the parties.

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12. For the fore-going reasons, the petitioners are hereby permitted to file an appeal within a period of two weeks from the date of receipt of copy of this order before the concerned appellate authorities. If appeals are filed within the above said period, the appellate authority is directed to adjust the tax paid by the respective petitioners under the Central Act for the respective assessment years for which an appeal is filed under Section 31 of the local Act so as to maintain the appeals. If any reminder of tax is there on so adjusting with the Department, that is directed to be adjusted for granting interim order. If there is no reminder of the tax, as aforesaid, it is open to the appellate authority to pass appropriate orders. Useful reference can be had to the last paragraph of the judgment of this court in A. ARPUDASWAMY CHETTIAR VS. DEPUTY COMMERCIAL TAX OFFICER, NAGAPATTINAM reported in (1969) 24 STC 459 in which a direction similar to the one above granted for adjustment of tax already paid was made by this Court as early as in the year 1969, wherein it was held as follows:-

> " It will be much better for the assessing authorities to give credit to the amounts collected from the assessee under the assessment made under the Madras Central Sales Tax Act when making a demand for the assessment at the higher rate levied under the Central Sales Tax Act so that the assessee is not compelled to pay over any part of the sum twice. But if he had already paid any and twice over the simplest way is to give credit to what has already been paid twice over and collect only the balance and make the necessary adjustment between the amounts due to be collected under the Central Sales Tax Act and the Madras Central
>
> Sales Tax Act under the appropriate heads of account. "

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13. Accordingly, the writ petitions are disposed of. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Kb/usk

To

The Commercial Tax Officer
Coonoor.

Four ccs to to Mr.N.Inbarajan, Advocate Sr Nos. 12700 to 12703
Four ccs to the Special Government Pleader(taxes) Sr Nos. 12845,12846,12856,12857)

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